

# United States Senate

WASHINGTON, DC 20510

December 9, 2020

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The Honorable, Ajit Pai, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, Northwest  
Washington, D.C. 20554

Dear Chairman Pai,

The Federal Communications Commission (FCC) plays an imperative role in addressing the critical need for broadband access across the United States, especially in rural America. Over the last five years, I have worked as your partner in Congress to successfully increase funding for existing programs, created new programs to increase the availability of broadband in rural communities, and worked to update our nations mapping so that we can more efficiently target unserved areas in our country.

The largest opportunity that we have to close the digital divide, is the Rural Digital Opportunity Fund (RDOF), providing funding to deploy broadband in rural America over the next decade. On December 7, 2020, the FCC announced that an estimated 218,000 West Virginians will gain access to high-speed broadband through the Rural Digital Opportunity Fund Phase I auction.<sup>1</sup> This auction allocated \$362,066,660.20 in support to expand broadband to 119,267 unserved homes and businesses in West Virginia. While I am pleased that the auction encouraged robust competition that resulted in nine providers winning support in my state, I continue to have concerns about the ability of Frontier Communications (Frontier) to meet the obligations expected of them as a gigabit tier provider.

As you move forward with the more in depth review of successful bidders long-form application, I urge you to review Frontier's submissions to ensure they will be able to honor their obligations to provide gigabit level service in over 79,391 locations across West Virginia. Frontier's mismanagement of prior federal funding through the Broadband Technology Opportunity Fund program, resulting in \$4.7 million in funds repaid to the federal government for improper use, raises significant questions about their ability to manage federal funds of this magnitude.<sup>2</sup> Furthermore, Frontier has a documented pattern of history demonstrating inability to meet FCC deadlines for completion of Connect America Fund Phase II support in West Virginia.<sup>3</sup> The inability to deploy federal funds in a timely fashion to make improvements to a network delivering broadband service at speeds of 10/1Mbps or higher should raise significant concerns about their capacity to build out a network delivering one hundred times that level.

<sup>1</sup> United States, Federal Communications Commission, *Rural Digital Opportunity Fund Phase 1 Auction (Auction 904) Closes* (DA 20-1422), December 2020.

<sup>2</sup> United States, Office of Inspector General, Office of Investigations, *Alleged Unallowable Costs Under NTIA Broadband Technology Opportunities Program Grant* (Report Number 14-0480), June 2017

<sup>3</sup> <https://ecfsapi.fcc.gov/file/10115075584633/FTR%20YE%202019%20CAF%20Letter%201.15.20.pdf>

Specifically with regards to Frontier's assigned performance tier, I urge you to exert the utmost scrutiny to ensure they have the technological capability to deliver gigabit level service in West Virginia. As stated in the Federal Register dated June 18, 2020, the FCC reserves the right to reject an applicant's long-form application if they do not meet the technical qualifications for the performance tier in which they were permitted to bid.<sup>4</sup> Based on Frontier's current and previous performance, I am concerned they lack the technological capabilities in West Virginia to transition from a provider that struggles to deliver the FCC minimum standard of 25/3 Mbps to a provider that is able to provide gigabit level service to 95 percent of the required number of locations in the state.<sup>5</sup>

Secondly, I urge you to closely scrutinize the financial capability of Frontier to finance these investments, particularly as they emerge from a Chapter 11 financial restructuring. Because of the nature of a reverse auction, it is entirely possible, if not likely that a bidder will be required to invest their own funds to cover costs above and beyond the subsidy provided by RDOF. Emerging from a financial restructuring requires significant private capital and I am concerned about the ability of Frontier to raise sufficient capital to both complete their financial restructuring and fund the construction of a network that will deliver the required gigabit level service in the locations they successfully bid in the RDOF auction. The expense of constructing a network capable of delivering gigabit service is an expensive and daunting feat for a company in a strong financial position, let alone one that is in financial turmoil. Furthermore, based on the total amount provisionally awarded in the RDOF auction, the average subsidy per location is less than fifty percent.<sup>6</sup> Frontier will undoubtedly have to supplement the RDOF subsidy with private capital in order to construct a network capable of delivering gigabit level service. At an estimated average reserve subsidy of 47 percent of the initial reserve price for census blocks, Frontier would need to raise over \$250 million in private capital to fund the buildout of a gigabit network in West Virginia. I urge the FCC to closely scrutinize Frontier's ability to secure this amount of private capital, considering they are in the midst of a complex financial restructuring.

The COVID-19 pandemic has proven that access to true broadband service is no longer an optional luxury, it is a core component of everyday life. The funding made available by the RDOF auction presents a transformational opportunity for West Virginia to take a substantial step towards closing the digital divide in our state. However, that will only occur if the companies constructing these networks truly have the ability to deliver the gigabit level of service they've committed to with their short form applications.

If, during the review of Frontier's long-form application for the West Virginia locations there are any questions or concerns about their ability to deliver on the commitment made in their short form application, I urge the FCC to reject their long-form application. The stakes are simply too high to provide nearly \$250 million to a company that does not have the capability to deliver on the commitments made to the FCC. West Virginia cannot afford to be let down, yet again, by the failure of Frontier to deliver on promises made to federal partners.

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<sup>4,5</sup> Rural Digital Opportunity Fund Phase 1 Auction Scheduled for October 29, 2020; Notice and Filing Requirements and other Procedures for Auction 904, 85 Fed. Reg. 36758 (June 18, 2020)

<sup>6</sup> <https://www.wmky.org/post/fcc-thousands-west-virginians-will-have-ultra-fast-broadband-over-next-decade>

Thank you for your consideration of this critical matter. I will continue to be your partner in expanding broadband throughout rural America.

Sincerely,

A handwritten signature in blue ink that reads "Shelley Moore Capito". The signature is written in a cursive style with a prominent dot over the 'i' in "Capito".

Shelley Moore Capito  
United States Senator